

Thrift Bulletin

**TB 68a**



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## Appeals and Ombudsman Matters

**Summary:** This bulletin provides a process for the appeal of material supervisory decisions and a description of the Office of Thrift Supervision's (OTS) Ombudsman's office. Thrift Bulletin (TB) 68a rescinds TB 68, dated July 15, 1996.

**For Further Information Contact:** Your OTS Regional Office or Managing Director, Examinations, Supervision, and Consumer Protection, Washington, D.C., regarding the appeal of material supervisory decisions, or the Ombudsman regarding complaints about OTS. You may access this bulletin at our website: [www.ots.treas.gov](http://www.ots.treas.gov).

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## APPEALS

Federal law requires that OTS and the other federal banking agencies establish an appellate process for the review of material supervisory determinations and appoint an Ombudsman (12 USC 4806). This bulletin establishes the guidelines that govern OTS's appeals process and describes the OTS Ombudsman's office.

Although the statute only requires OTS to develop an internal appeals process for insured depository institutions, the bulletin expands the process to include holding companies and individuals. For purposes of this bulletin, we define "you" as an OTS-regulated savings association, a holding company, or individual affected by an OTS supervisory determination.

OTS encourages you to minimize costs by preparing the appeal yourself rather than using outside attorneys, accountants, or consultants. If warranted and you agree, OTS may use outside experts to evaluate certain issues associated with your appeal. In such circumstances, you shall pay the costs. OTS does not charge a filing fee for appeals.

OTS encourages the resolution of issues through informal communications between directors and management of the savings association or holding company, and OTS regional staff. If you cannot resolve the issue successfully at the regional level, you may appeal and seek independent review by the Managing Director, Examinations, Supervision, and Consumer Protection, in

Washington, D.C. Individuals affected by an OTS supervisory determination may also file an appeal.

### **Scope of OTS Appeals Process**

You may appeal material supervisory determinations such as the following:

- Thrift institution examination ratings.
- The adequacy of loan loss reserve provisions.
- Significant loan classifications.
- The categorization of a savings and loan holding company and the assignment of examination ratings.

The following determinations are not appealable:

- Decision to appoint a conservator or receiver.
- Preliminary examination findings and conclusions before the issuance of a final report of examination.
- Any decision relating to formal enforcement-related action such as the following:
  - Initiating a formal investigation.
  - Filing a notice of charges.
  - Assessing civil money penalties.
  - Taking action pursuant to the Prompt Corrective Action provisions of 12 USC 1831o.

### **Review and Appeal of Assessments**

In the preamble to the final rule on Assessments and Fees, OTS states it will address the review and appeal of assessments under the procedures set out in this Thrift Bulletin. You may raise concerns about assessments with the Regional Director using the same procedures for material supervisory matters discussed below. OTS intends to apply these processes to appeals of such supervisory determinations as the categorization of a holding company as Category I or II or a conglomerate and the assignment of examination ratings. OTS will not entertain any requests for refund or proration of assessments, other than for computational errors. While OTS will address computational errors in assessments through these procedures, it anticipates that the appropriate regional staff will first review such errors.

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## **Regional Review**

OTS encourages you to discuss concerns about examination findings with the appropriate regional staff during the examination. You should raise the matter directly with the examiner-in-charge (EIC) while the EIC is at the savings association or holding company. If issues remain unresolved, you should request a meeting with the EIC and his or her supervisor. Communication at this stage may resolve the matter before OTS issues the report of examination. If the issue does not get resolved, examiners will briefly note the issue in the final report of examination. You may discuss with regional staff any nonexamination related issues at any time. To ensure a prompt and timely resolution, you should raise the issue at the earliest possible date.

### *Regional Director*

You may raise a concern about a material supervisory determination either orally or preferably in writing to the Regional Director. If you elect to state the issue in writing, you should provide a description of the issue and the related facts in a letter signed by the Managing Officer. The regional office will respond to your letter promptly. The person who reviews your letter will not be a person who was directly involved in the issue.

## **Appeal to the Managing Director, Examinations, Supervision, and Consumer Protection**

If the above-described process does not result in a satisfactory resolution, or if you elect to use the appeal process without first obtaining regional review, you may file an appeal with the Managing Director, Examinations, Supervision, and Consumer Protection. The following procedures apply to appeals:

- The board of directors must authorize an appeal by a savings association or holding company by resolution. An appeal by an individual does not require an authorization from the board of directors.
- You must file one copy of the resolution with the appeal.
- You must file the appeal with the Managing Director, Examinations, Supervision and Consumer Protection, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.
- You must file an appeal either:
  - Within 60 calendar days from the date you were notified of a material supervisory decision.
  - Within 60 calendar days from the date you were notified of the Regional Director's decision if you sought regional review.

The appeal should contain the following information:

- A concise statement, no longer than five pages, of the specific matter or decision you are appealing. For example, identify the precise rating, classified loans(s), property, appraisal, etc.
- A statement of why you are submitting an appeal and why you disagree with the OTS decision.
- The remedy you are seeking and its financial effect, if any.
- A statement of whether you tried to resolve the issue at the regional level.
- A description of any applicable statutes, regulations, policies, or procedures.
- Confirmation as to whether you are, in the interim, complying with the terms of the OTS decision.
- Copies of any other supporting documents, including excerpts from supervisory documents, reports, and correspondence with the region about the supervisory determination. (These copies do not count toward the five-page limit).
- The name, address, and telephone number of a person who can provide additional information if necessary.

OTS will grant a suspension from the requirement that a savings association publicly disclose its Community Reinvestment Act (CRA) Performance Evaluation in its public file within 30 calendar days after receipt from OTS, if the institution submits an appeal to the Regional Director or Managing Director, Examinations, Supervision and Consumer Protection pertaining to its CRA rating within 30 calendar days.

### **Effect of Initiating an Appeal**

An appeal will not suspend or delay the pursuit of any enforcement action or formal investigation. An appeal will not delay the obligation to comply with any order or other determination resulting from an enforcement action. An appeal will not operate automatically to relieve you of the obligation to comply with required actions relating to the issue.

### *Retaliation*

OTS prohibits any employee from acts of retaliation against a savings association, holding company, or other party that files an appeal.

### **OMBUDSMAN MATTERS**

Federal law requires that each federal banking agency appoint an Ombudsman (12 USC 4806). The Ombudsman is to:

- Act as a liaison between the agency and any affected person with respect to any problem in dealing with the agency resulting from the regulatory activities of the agency.

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- Assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.
- Assure that safeguards exist for protecting any party who appeals a material supervisory determination from retaliation by agency examiners.

## **Responsibilities of the Ombudsman**

The Ombudsman ensures that OTS addresses complaints about OTS regulatory actions in a fair and timely manner. The Ombudsman's major function is to provide assistance as a liaison with the thrift industry and the public on issues, concerns, or problems that they may have in dealing with OTS. The Ombudsman reports directly to the Director of OTS.

## **Handling of Complaints**

When you bring a problem to the attention of the Ombudsman, and there is an existing avenue of appeal on the merits or another appropriate forum for resolution, the Ombudsman will explain the process or forum for resolution, and direct the complainant to the appropriate appeals process or forum for the dispute. OTS's regulations or procedures provide existing mechanisms for resolution of disputes in many instances such as the following:

- Prompt corrective action directives under Section 38 of the Federal Deposit Insurance Act.
- Denials or partial denials of Freedom of Information or Privacy Act requests.
- Issuance of capital directives.
- Material supervisory decisions.
- Matters within the jurisdiction of the Department of the Treasury's Inspector General or Federal or State prosecutorial authorities.
- Consumer complaints.

Where there is no established process to resolve a dispute or if you have a complaint with regard to the established process, the Ombudsman will meet with the appropriate OTS official or arrange a meeting between the complainant and the appropriate OTS official. If the Ombudsman believes OTS has not satisfactorily addressed a problem or complaint, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

## **Safeguards**

The Ombudsman ensures that safeguards exist to encourage complainants to come forward and preserve confidentiality. To encourage complainants to come forward, OTS established an appeals process. The Ombudsman is responsible for resolving complaints with OTS officials at all levels of the agency and has the authority to review allegations of retaliation.

The Ombudsman will keep all information and materials confidential and will not disclose them except to appropriate reviewing officials, officials with appropriate authorization, or as required by law. The Ombudsman will honor requests to keep confidential the identity of the complainant. The resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible if the identity of the complainant remains confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the complainant. OTS established these procedures to preserve the confidentiality of complainants and the Ombudsman function.

### **Retaliation**

The Ombudsman may receive complaints of retaliation against a party as a result of using the Ombudsman or any existing avenue of appeal or complaint forum. Upon receiving a complaint of retaliation, the Ombudsman will investigate the basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Director of OTS with a recommendation. The Ombudsman will refer findings of retaliation to the Deputy Director for possible disciplinary action against the OTS employee who retaliated.

### **Procedures**

You may contact the Ombudsman at any time regarding a problem resulting from the regulatory activities of the OTS by calling (202) 906-7945 or writing to: Ombudsman, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552 or by email at: [ombudsman@ots.treas.gov](mailto:ombudsman@ots.treas.gov). Additional information on the Ombudsman is listed on our website at: [www.ots.treas.gov](http://www.ots.treas.gov), under OTS contacts.



—Scott M. Albinson  
Managing Director  
*Examinations, Supervision, and Consumer Protection*